

REMARKS

I. Status of the Claims

Claims 1-160 are pending in this application. Claims 75-156, 159, and 160 have been withdrawn as being directed to non-elected subject matter. Claims 1-74, 157, and 158 are under examination.

In the present Amendment, Claim 1 has been amended to explicitly recite the pH value of the composition being effective to lanthionize the keratin fibers. Applicants have not introduced any new matter by the amendments, nor are any estoppels intended thereby, because the composition claimed in Claim 1 as originally filed is for lanthionizing keratin fibers and the pH value of such a lanthionizing composition is inherently present in Claim 1 as originally filed. Further, the amendment does not raise new issues or necessitate the undertaking of any additional search of the art by the Examiner. Therefore, Applicants respectfully request that the present Amendment be entered by the Examiner, placing the pending claims in condition for allowance, or at least in a better condition for an appeal, if necessary.

II. Rejection under 35 U.S.C. § 102

The Examiner has maintained the rejection of claims 1-5, 9-15, 17-24, 26-32, 34-40, 44-50, 52-59, 61-67, 69-73, 157, and 158 under 35 U.S.C. § 102(b) as being anticipated by Kolc et al. (U.S. Patent No. 5,223,252) ("*Kolc*"). Office Action, pages 2-3. Applicants respectfully disagree for at least one of the following reasons.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." M.P.E.P.

§ 2131 (quoting *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)) (emphasis added). Further, a rejection under § 102 is proper only when the claimed subject matter is identically described or disclosed in the prior art. *In re Arkley*, 455 F.2d 586, 587 (CCPA 1972) (emphasis added). The identical invention must be described in as complete detail as is contained in, and must be arranged as required by, the claim. M.P.E.P. § 2131.

First, the Examiner has failed to establish that each and every element in claims 1-5, 9-15, 17-24, 26-32, 34, 35, and 157 of the present invention is either expressly or inherently described in *Kolc*. Specifically, *Kolc* does not expressly or inherently teach “the composition has a pH value effective to lanthionize the keratin fibers” as cited in, for example, Claim 1 as amended of the present invention. Instead, as the Examiner admits, *Kolc* “teaches a mild alkaline reducing composition for permanently waving or reshaping human hair.” Office Action, page 2 (emphasis added). A reducing composition is different from a lanthionizing composition. As explained in “Milady’s Hair Structure and Chemistry Simplified” by Douglas D. Schoon, pages 191-192 (“*Schoon*”) submitted by Applicants on February 5, 2004, a reducing composition can cause the disulfide bonds in the hair to be broken and form a bridge using two sulphur atoms on adjacent polypeptide chains; while a lanthionizing composition can also cause the disulfide bonds in the hair to be broken, but form a single sulphur cross-link bond. *Schoon*, at page 191 (emphasis added). In other words, a reducing composition causes different chemical modification on the hair from a lanthionizing composition. The pH value of a reducing composition is usually not high enough to cause lanthionizing. See *Schoon*, at pages 191-192.

In response to Applicants' argument that a pH of 7.5 in a composition disclosed in *Kolc* is not sufficient to lanthionize hair, the Examiner states that *Schoon* "teaches that the low pH reducers are used as the relaxers and are recommended for thin or brittle hair (see page 1[9]1, paragraph 5)."¹ Office Action, page 5. Further, the Examiner concludes that the composition of *Kolc* "can be used for lanthionizing the keratin fibers as claimed." *Id.* Applicants respectfully disagree.

As the Examiner admits, *Schoon* teaches "low pH reducers," which, as discussed above, are different from a lanthionizing composition. In addition, *Schoon* teaches that the low pH reducers "are less effective in straightening hair, especially resistant hair." *Schoon*, page 191. Therefore, *Schoon* does not teach a pH vaule effective to lanthionize the keratin fibers.

Second, the Examiner has failed to establish that each and every element in claims 36-40, 44-50, 52-59, 61-67, 69-73, and 158 of the present invention is either expressly or inherently described in *Kolc*. Specifically, *Kolc* does not expressly or inherently teach a "pretreatment composition for lanthionizing keratin fibers" as recited in, for example, Claim 36 of the present invention. *Kolc* nowhere teaches that its composition is a pretreatment composition for lanthionizing keratin fibers. Therefore, this rejection is improper.

Accordingly, Applicants respectfully request withdrawal of these rejections.

¹ Applicants reasonably believe that the Examiner has made a typographic error in the Office Action, page 5, line 5, in reciting page 191 of *Schoon* instead of page 11. Applicants respectfully request clarification of the record.

III. **Rejection under 35 U.S.C. § 103**

The Examiner has maintained the rejection of claims 6-8, 16, 25, 41-43, 51, 60, 68, and 74 under 35 U.S.C. § 103(a) as being unpatentable over *Kolc* in view of U.S. Patent No. 5,753,215 ("*Mougin*"). Office Action, page 3. Applicants respectfully disagree for at least one of the following reasons.

To establish a *prima facie* case of obviousness, three basic criteria must be met, including that the prior art reference must teach or suggest all the claim limitations. M.P.E.P. § 2143. Here, neither *Kolc* nor *Mougin* alone or in combination teaches or suggests "the composition has a pH value effective to lanthionize the keratin fibers" as cited in, for example, Claim 1 as amended of the present invention. As discussed above, *Kolc* merely teaches a mild alkaline permanent wave reducing composition, which is different from a lanthionizing composition. The Examiner's reliance on *Mougin* is limited to its teaching of organic nucleophiles and polyvalent metal salts to remedy *Kolc*'s deficiency of lack of such teachings. Office Action, page 3. *Mougin* nowhere teaches or suggests that its composition can be used to lanthionize keratin fibers.

In addition, neither *Kolc* nor *Mougin* alone or in combination teaches or suggests a "pretreatment composition for lanthionizing keratin fibers" as recited in, for example, Claim 36 of the present invention.

Therefore, as the Examiner has failed to establish a *prima facie* case of obviousness, Applicants respectfully request that the rejection be withdrawn.

IV. Conclusion

In view of the foregoing amendments and remarks, Applicants respectfully request the reconsideration and reexamination of this application, and the timely allowance of the pending claims.

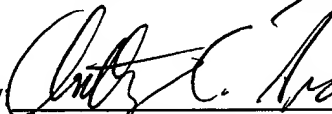
If the Examiner believes a telephone conference would be useful in resolving any outstanding issues, he is invited to call the undersigned Applicants' representative at (202) 408-4218.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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